

UNITED STATES OF AMERICA :
:
v. : **CRIMINAL NO. 03-496**
:
GEORGE CAPELL :

1. The defendant agrees to plead guilty to 41 counts of an indictment, charging him with 25 counts of wire fraud, in violation of Title 18, United States Code, Section 1343, as charged in Counts 1 to 19, 21 to 25, and 27; one count of wire fraud against a financial institution, in violation of Title 18, United States Code, Section 1343, as charged in Count 20; eight counts of mail fraud, in violation of Title 18, United States Code, Section 1341, as charged in Counts 28 to 35; and seven counts of money laundering, in violation of Title 18, United States Code, Section 1957, as charged in Counts 36 to 42; all arising from the defendant's participation from in or about September 1999 through at least March 21, 2001, as the Chief Executive Officer for the company Computer Personalities Systems, Inc. ("CPSI"), in wire and mail fraud schemes designed to defraud (i) individual consumers from across the country, (ii) financial companies, and (iii) suppliers of products and services; also arising from the defendant paying an approximate total of \$340,522.41 through four checks, knowing that these checks were derived from a specified unlawful activity, that is, the wire fraud and mail fraud schemes at issue, in

order to acquire (i) a 2000 Dodge Durango; (ii) a 1967 Chevrolet Corvette; (iii) 17.93 acres of property, located adjacent to the residence at 4970 Furham Road, Gardenville; and (iv) a 2001 Monaco Recreational Vehicle; and also arising from the defendant providing to Patrick Buttery three checks in the amounts of \$60,000, \$40,000 and \$35,000, respectively, knowing that these checks were derived from a specified unlawful activity, that is, the wire fraud and mail fraud schemes at issue. The defendant further acknowledges his waiver of rights, as set forth in the attachment to this agreement.

2. The defendant agrees to forfeiture as provided in Attachment A to this agreement.

3. The defendant agrees to pay the special victims/witness assessment in the amount of \$4,100.00 before the time of sentencing and shall provide a receipt from the Clerk to the government before sentencing as proof of this payment.

4. Defendant waives any claim under the Hyde Amendment, 18 U.S.C. § 3006A (Statutory Note), for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

5. At the time of sentencing, the government will:

- a. Move to dismiss Count 26 of the indictment, and the notice of forfeiture in the indictment based on Counts 20 to 22, as to this defendant. The defendant waives the statute of limitations as to all counts to be dismissed under this agreement and agrees that if the defendant withdraws from, or successfully challenges, the guilty plea entered under this agreement, or if these counts are otherwise

reinstated under the terms of this agreement, neither the statute of limitations nor the Double Jeopardy Clause will bar prosecution on any of these dismissed counts.

- b. Make whatever sentencing recommendation as to imprisonment, fines, forfeiture, restitution and other matters which the government deems appropriate.
- c. Comment on the evidence and circumstances of the case; bring to the Court's attention all facts relevant to sentencing including evidence relating to dismissed counts, if any, and to the character and any criminal conduct of the defendant; address the Court regarding the nature and seriousness of the offense; respond factually to questions raised by the Court; correct factual inaccuracies in the presentence report or sentencing record; and rebut any statement of facts made by or on behalf of the defendant at sentencing.

6. Nothing in this agreement shall limit the government in its comments in, and responses to, any post-sentencing matters.

7. The defendant understands, agrees and has had explained to him by counsel that the Court may impose the following statutory maximum sentence for wire fraud, as charged in Counts 1 to 19, 21 to 25, and 27: 5 years of imprisonment, a 3-year period of supervised release, a \$250,000 fine, and a \$100 special assessment. The defendant also understands, agrees and has had explained to him by counsel that the Court may impose the

following statutory maximum sentence for wire fraud, as charged in Count 20 (involving a financial institution): 30 years of imprisonment, a 5-year period of supervised release, a \$1,000,000 fine, and a \$100 special assessment. The defendant also understands, agrees and has had explained to him by counsel that the Court may impose the following statutory maximum for mail fraud, as charged in Counts 28 to 35: 5 years of imprisonment, a 3-year period of supervised release, a \$250,000 fine, and a \$100 special assessment. The defendant also understands, agrees and has had explained to him by counsel that the Court may impose the following statutory maximum sentence for money laundering, as charged in Counts 36 to 42: 10 years of imprisonment, a 3-year period of supervised release, a \$250,000 fine, and a \$100 special assessment.

Total Maximum Sentence is: 265 years imprisonment, 5-year period of supervised release, a \$11,000,000 fine, and a \$4,100 special assessment. Full restitution shall be ordered on a schedule to be set by the Court. Forfeiture of personal property used or intended to be used to commit the offenses and any property constituting, or derived from, proceeds obtained directly or indirectly as the result of the violations of Title 18, United States Code, Section 1957 also may be ordered.

The defendant further understands that supervised release may be revoked if its terms and conditions are violated. When supervised release is revoked, the original term of imprisonment may be increased by 5 years in the case of Class B felonies. Thus, a violation of supervised release increases the possible period of incarceration and makes it possible that the defendant will have to serve the original sentence, plus a substantial additional period, without credit for time already spent on supervised release.

8. The defendant may not withdraw his plea because the Court declines to follow any recommendation, motion or stipulation by the parties to this agreement. No one has promised or guaranteed to the defendant what sentence the Court will impose.

9. Pursuant to § 6B1.4 of the Sentencing Guidelines, the parties enter into the following stipulations under the Sentencing Guidelines Manual effective November 1, 2000. It is understood and agreed that: (1) the parties are free to argue the applicability of any other provision of the Sentencing Guidelines, including offense conduct, offense characteristics, criminal history, adjustments and departures; (2) these stipulations are not binding upon either the Probation Department or the Court; and (3) the Court may make factual and legal determinations that differ from these stipulations and that may result in an increase or decrease in the Sentencing Guidelines range and the sentence that may be imposed:

- a. The parties agree and stipulate that the fraud loss caused by the defendant in furtherance of the criminal activity jointly undertaken by the defendant and his co-schemer was more than \$20,000,000 but less than \$40,000,000; this amount was within the scope of the defendant's agreement; this amount was reasonably foreseeable to the defendant in connection with the scheme; and the defendant's Guideline range should be calculated based on this amount pursuant to Guideline Section 1B1.3, which would result in a 16-level increase in the base offense level pursuant to Guideline Section 2F1.1(b)(1)(Q).

- b. The parties agree and stipulate that the offenses involved more than minimal planning, requiring a 2-level upward adjustment under Guideline Section 2F1.1(b)(2)(A).
- c. The parties agree and stipulate that the offenses involved mass marketing, requiring a 2-level upward adjustment under Guideline Section 2F1.1(b)(3).
- d. The parties agree and stipulate that the defendant had an aggravating role in the offense, requiring a 2-level upward adjustment under Guideline Section 3B1.1(c).
- e. The parties agree and stipulate that, as of the date of this agreement, the defendant has demonstrated acceptance of responsibility for his offense making the defendant eligible for a 2-level downward adjustment under Guideline Section 3E1.1(a).
- f. The parties agree and stipulate that, as of the date of this agreement, the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying the government of his intent to plead guilty, making the defendant eligible for an additional 1-level downward adjustment under Guideline Section 3E1.1(b).

10. The government understands that the defendant will contend that the defendant was conducting plea negotiations with the government, that these negotiations precipitated the guilty plea of co-defendant Patrick Buttery, and that the defendant's sentence

therefore should be reduced under United States v. Booker, 125 S. Ct. 738 (2005). The defendant understands that the government has reserved its right to oppose this position.

11. The government declines prosecution of additional criminal fraud charges against the defendant arising from conduct involving RBS Lynk up until the date of this agreement.

12. In exchange for the undertakings made by the government in entering this plea agreement, the defendant voluntarily and expressly waives all rights to appeal or collaterally attack the defendant's conviction, sentence, or any other matter relating to this prosecution, whether such a right to appeal or collateral attack arises under 18 U.S.C. § 3742, 28 U.S.C. § 1291, 28 U.S.C. § 2255, or any other provision of law.

a. Notwithstanding the waiver provision above, if the government appeals from the sentence, then the defendant may file a direct appeal of his sentence.

b. If the government does not appeal, then notwithstanding the waiver provision set forth in this paragraph, the defendant may file a direct appeal but may raise only claims that:

- (1) the defendant's sentence on any count of conviction exceeds the statutory maximum for that count as set forth above;
- (2) the sentencing judge erroneously departed upward pursuant to the Sentencing Guidelines;
- (3) the sentencing judge, exercising the Court's discretion pursuant to United States v. Booker, 125 S. Ct. 738 (2005),

imposed an unreasonable sentence above the final

Sentencing Guideline range determined by the Court.

If the defendant does appeal pursuant to this paragraph, no issue may be presented by the defendant on appeal other than those described in this paragraph.

13. The defendant is satisfied with the legal representation provided by the defendant's lawyer; the defendant and this lawyer have fully discussed this plea agreement; and the defendant is agreeing to plead guilty because the defendant admits that he is guilty.

14. It is agreed that: the parties' guilty plea agreement contains no additional promises, agreements or understandings other than those set forth in this written guilty plea agreement, and that no additional promises, agreements or understandings will be entered into unless in writing and signed by all parties.

PATRICK L. MEEHAN
United States Attorney

GEORGE CAPELL
Defendant

LINDA HOFFA
Chief, Criminal Division
Assistant United States Attorney

SCOTT DICLAUDIO, ESQ.
Counsel for Defendant

JUDY GOLDSTEIN SMITH
Assistant United States Attorney

PETER D. HARDY
Assistant United States Attorney

Date:

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GEORGE CAPELL :

1. I understand that I do not have to plead guilty.
2. I may plead not guilty and insist upon a trial.
3. At that trial, I understand
 - a. that I would have the right to be tried by a jury that would be selected from the Eastern District of Pennsylvania and that along with my attorney, I would have the right to participate in the selection of that jury;
 - b. that the jury could only convict me if all twelve jurors agreed that they were convinced of my guilt beyond a reasonable doubt;
 - c. that the government would have the burden of proving my guilt beyond a reasonable doubt and that I would not have to prove anything;
 - d. that I would be presumed innocent unless and until such time as the jury was convinced beyond a reasonable doubt that the government had proven that I was guilty;
 - e. that I would have the right to be represented by a lawyer at this trial and at any appeal following the trial, and that if I could not afford to hire a lawyer, the court would appoint one for me free of charge;
 - f. that through my lawyer I would have the right to confront and cross examine the witnesses against me;
 - g. that I could testify in my own defense if I wanted to and I could subpoena witnesses to testify in my defense if I wanted to; and

h. that I would not have to testify or otherwise present any defense if I did not want to and that if I did not present any evidence, the jury could not hold that against me.

4. I understand that if I plead guilty, there will be no trial and I would be giving up all of the rights listed above.

5. I understand that if I decide to enter a plea of guilty, the judge will ask me questions under oath and that if I lie in answering those questions, I could be prosecuted for the crime of perjury, that is, for lying under oath.

6. I understand that if I plead guilty, I have waived my right to appeal, except as set forth in appellate waiver provisions of my plea agreement.

7. Understanding that I have all these rights and that by pleading guilty I am giving them up, I still wish to plead guilty.

GEORGE CAPELL
Defendant

SCOTT DICLAUDIO, ESQ.
Counsel for Defendant

ATTACHMENT A

1. The defendant agrees to the following:

- a. The defendant represents that he has an interest in each of the following assets that is forfeitable pursuant to Title 18, United States Code, Section 982, based upon his plea of guilty to the counts 36 to 42. He further hereby forfeits his right, title and interest in the following assets, and agrees that such assets constitute: property involved in, or constitute proceeds from, or are derived from proceeds from, his violations of Title 18, United States Code, Section 1957, as set out in Counts 36 to 42:
 - (a) the approximate sum of \$475,522.41, which represents to total sum of the checks at issue in Counts 36 through 42, and \$340,522.41 of which derives from Counts 36 to 39;
 - (b) 2000 Dodge Durango, VIN no. 1B4HS28N9YF153913;
 - (c) 1967 Chevrolet Corvette, VIN no. 194677S111712;
 - (d) 17.93 acres of property, located adjacent to the residence at 4970 Furham Road, Gardenville; and
 - (e) 2001 Monaco Recreational Vehicle, VIN no. 1RF12061312011619.
- b. The defendant agrees to the entry of a preliminary order of forfeiture pursuant to Fed.R.Crim.P. 32.2(b) as soon as possible after the guilty plea and before sentencing. The defendant also consents to the interlocutory sale of any or all of the foregoing assets, upon motion of the government, following the entry of a preliminary order of forfeiture. Pursuant to Fed.R.Crim.P. 32.2(b)(3), the defendant further agrees that, upon the request of the government, the preliminary order of forfeiture may be made final before his sentencing.
- c. The defendant agrees, with respect to any real property to be forfeited, that: the government may file a lis pendens on the real property; the government shall have access to the real property for the purposes of inspection, appraisal and testing; and the defendant will take all actions and execute all documents requested by the government to effectuate the government's access to the real property. The defendant agrees that should he fail to timely satisfy these obligations, the government may elect to: void this agreement; void the forfeiture portion of the agreement and try the forfeiture before the Court and seek a larger forfeiture; consider such failure in deciding whether to file any motion under Guideline Section 5K1.1; argue that the defendant is not entitled to a downward adjustment for acceptance of responsibility under Guideline Section 3E1.1; and/or pursue any and all forfeiture remedies available at law or equity. The defendant agrees to waive any right to trial by jury on all forfeiture issues.

- d. In the event that any claim is made by third parties to any of the assets listed at paragraph (a) above, the defendant agrees to forfeit substitute assets equal in value to those assets claimed by third parties.
- e. The defendant agrees that he will cooperate with the government by taking whatever steps are necessary to pass clear title to the United States of the assets listed in paragraph (a) above, including, but not limited to, assisting in bringing any assets, or the proceeds from the sale of assets, located outside the United States within the jurisdiction of the United States, completing any legal documents required for the transfer of assets to the United States, and taking whatever steps are necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted, hidden or otherwise made unavailable for forfeiture.
- f. The defendant understands and agrees that, as a condition precedent to this agreement, he is required to complete truthfully and accurately a financial disclosure form listing all of his income, assets, liabilities and financial interests, held directly or indirectly. The defendant further represents and warrants to the government that he has no interest, either direct or indirect, whether held in his own name or in the name of a relative, spouse, associate, another person or entity, whether held in this country or outside this country, in any property, real or personal, or any asset that would be subject to forfeiture on the basis of Title 18, United States Code, Section 982, based upon his plea of guilty to the counts 36 to 42, except for the assets and property described in paragraph (a) above, and understands and acknowledges that the government is relying upon the defendant's representations regarding his financial status and the existence of forfeitable assets in entering into this plea agreement. If the defendant's representations are false or inaccurate, the government may elect to: void this agreement; void the forfeiture portion of the agreement and try the forfeiture before the Court and seek a larger forfeiture; consider such representations in deciding whether to file any motion pursuant to U.S.S.G. § 5K1.1; argue that the defendant is not entitled to a downward adjustment for acceptance of responsibility under Guideline Section 3E1.1; and/or pursue any and all forfeiture remedies available at law or equity. The defendant agrees to waive any right to trial by jury on all forfeiture issues.
- g. The defendant agrees to waive any claims, defenses or challenges arising under the Double Jeopardy or Excessive Fines Clauses of the Eighth Amendment, resulting from the forfeiture imposed as a result of this indictment and/or any pending or completed administrative or civil forfeiture actions and stipulates that such forfeiture is not grossly disproportionate to his criminal conduct.

- h. The defendant agrees that the forfeiture requirements of this agreement do not amount to extraordinary acceptance of responsibility and do not constitute any basis for a downward departure under the Sentencing Guidelines.